

1 ANDRÉ BIROTTE JR.  
United States Attorney  
2 ROBERT E. DUGDALE  
Assistant United States Attorney  
3 Chief, Criminal Division  
O. BENTON CURTIS III  
4 Assistant Chief  
Fraud Section, Criminal Division  
5 United States Department of Justice  
FRED MEDICK  
6 Trial Attorney  
Fraud Section, Criminal Division  
7 United States Department of Justice  
ALEXANDER F. PORTER  
8 Trial Attorney  
Fraud Section, Criminal Division  
9 United States Department of Justice  
1100 United States Courthouse  
10 312 North Spring Street  
Los Angeles, California 90012  
11 Telephone: (202) 674-5653  
E-mail: alexander.porter@usdoj.gov  
12

Attorneys for Plaintiff  
13 United States of America  
14

15 UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA, ) NO. CR 12-905-R  
18 Plaintiff, ) ORDER DENYING DEFENDANTS' MOTION  
19 v. ) FOR JUDGMENT OF ACQUITTAL  
20 SRI J. WIJEGUNARATNE, )  
21 HEIDI MORISHITA, )  
22 Defendants. )  
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ORDER

Defendant Heidi Morishita ("Morishita") filed a Motion for Judgment of Acquittal pursuant to Federal Rule of Criminal Procedure 29(c) on May 8, 2013. Defendant Sri J. Wijegunaratne ("Dr. J") joined in the motion on May 16, 2013.

On a motion for judgment of acquittal the Court views the evidence presented at the trial in the light most favorable to the verdict and must determine whether a rational jury could have found the defendant guilty beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979). Furthermore, full play must be given to the right of the jury to credibility, weight of the evidence, and draw justifiable inferences of fact. See Gendelman v. United States, 191 F.2d 993, 995 (9th Cir. 1951). Thus, if the Government's evidence was sufficient to make the question of the alleged kickback conspiracy one of fact for the jury, then the defendant is not entitled to a judgment of acquittal.

First, Defendant Morishita, joined by Dr. J, disputes whether a rational jury could have found them guilty beyond a reasonable doubt on Count Thirteen of the First Superseding Indictment. Specifically, defendants dispute (1) the reasonableness of the inferences the Government argued that the jury should draw from the checks issued by Fendih to Morishita; (2) the admissibility, relevance, and credibility of Dr. Glover's testimony against her; and (3) the admissibility, relevance, and credibility of the statements made by the investigating agents.

1           The Court finds no error in the admission of the evidence  
2 admitted. Indeed, most of the defendants' objections are to  
3 the credibility of witness testimony and not the sufficiency of  
4 the evidence itself. However, credibility determinations are  
5 for the trier of fact to make, not the Court to make. See  
6 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). For  
7 that reason, and the reasons stated at trial, the Court  
8 overrules defendant's objections to the testimony and evidence.

9           Second, after thorough review of the record, the Court  
10 finds that there was sufficient evidence to support the  
11 convictions for participating in a conspiracy to willfully  
12 receive kickbacks, in violation of 1320a-7b(b)(1)(A) & (2)(A).  
13 Unlike highly technical financial or tax regulations, the anti-  
14 kickback statute does not constitute a special exception to the  
15 rule that a jury must find a defendant guilty of violating a  
16 statute employing the word willfully if it believes that the  
17 defendant acted with knowledge that her conduct was unlawful.  
18 See United States v. Starks, 157 F.3d 833, 838 (11th Cir.  
19 1998). And here, taking kickbacks is hardly the sort of  
20 activity a person might expect to be legal. Id.

21           Based on the evidence presented at trial, a rational trier  
22 of fact could conclude that it was proven beyond a reasonable  
23 doubt that defendants Morishita and Dr. J knowingly and  
24 willfully took payments from Fendih as remuneration for the  
25 prescriptions they sold. The evidence supports the convictions  
26 of defendants on Count Thirteen for participating in a  
27 conspiracy to willfully receive kickbacks.

1 Finally, defendant Morishita, joined by Dr. J, strenuously  
2 asserts that if there were any conspiracy proven at trial, it  
3 was only a conspiracy between Morishita and Fendih, or Dr. J  
4 and Fendih, but not a single larger conspiracy. Put otherwise,  
5 the defendants argue that this case involved several smaller  
6 conspiracies rather than one large conspiracy. See Kotteakos  
7 v. United States, 328 U.S. 750 (1946); United States v. Duran,  
8 189 F.3d 1071 (9th Cir. 1999).

9 The Government asserts that the jury concluded that there  
10 was a single conspiracy, and the evidence submitted at trial  
11 supports that conclusion. The Court agrees that the jury could  
12 have rationally concluded that one conspiracy was proven beyond  
13 a reasonable doubt and not a multitude of smaller conspiracies.  
14 By its nature, a fraud like the one in this case cannot be  
15 achieved without the involvement of many individuals. There  
16 must be multiple doctors, multiple patients, and multiple  
17 recruiters in order to avoid detection and to fund the  
18 continual flow of kickbacks while awaiting approval and payment  
19 from Medicare. Thus, the jury could properly draw the  
20 inference based upon the evidence that Fendih utilized a  
21 network of other doctors and recruiters.

22 It is immaterial that defendants Morishita and Dr. J never  
23 met each other. In distinguishing between cases where there  
24 are multiple separate conspiracies rather than one large  
25 conspiracy, the central inquiry is whether each defendant knew  
26 or had reason to know that her benefits were probably dependent  
27 upon the success of the entire operation. See Duran, 189 F.3d  
28 at 1080. Here, the jury concluded that defendants had reason

1 to know that their benefits, the kickbacks, were probably  
2 dependent on the success of the overall conspiracy, and the  
3 evidence supports that conclusion.

4 Moreover, this case is not like Kotteakos or Duran, as  
5 defendant suggests. In those cases, each conspiracy was self-  
6 contained or concluded before the involvement of other  
7 individuals. In contrast, this case involved the submission of  
8 many fraudulent prescriptions and the multitude of referrals  
9 over a lengthy time period without the withdrawal of any co-  
10 conspirator. Consequently, the evidence supports the  
11 conviction.

12 Further, even if a variance occurred at trial, the  
13 variance constitutes reversible error only if the defendants'  
14 substantial rights were prejudiced. See Duran, 189 F.3d at  
15 1081. Here, the Court concludes that neither defendant has  
16 established that the variance would be prejudicial to their  
17 substantial rights because neither defendant has detailed how  
18 an evidentiary spillover affected the verdict against them.

19 For the foregoing reasons, the motion for judgment of  
20 acquittal on Count Thirteen is denied as to each of the  
21 defendants Morishita and Dr. J.

22  
23 IT IS SO ORDERED.

24  
25 September 18, 2013  
26 DATE

  
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27 THE HONORABLE MANUEL L. REAL  
28 UNITED STATES DISTRICT JUDGE